

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 18079 of 2004

Between:

Y. Srinivas Reddy, S/o. Y. Rama Subba Reddy,
R/o. 15/1054, Madampalli Street, Proddutur, Kadapa District.

..... PETITIONER

AND

- 1 The Government of Andhra Pradesh, Rep. by its Principal Secretary,
Health Medical & Family Welfare (E1) Department, Secretariat, Hyderabad.
- 2 The Competent Authority, N.T.R. university of Health, Medical Sciences,
Vijayawada.
- 3 The Registrar, N.T.R. university of Health, Medical Sciences,
Vijayawada.
- 4 The Medical Council of India, Rep. by its Secretary, Aiwan-e-Ghalab Marg,
Kotla Road, Mata Sundry College for Women, New Delhi - 100 0021.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, more particularly one in the nature Writ of Mandamus declaring the action of the respondents in not considering the admission to the petitioner in 1st year MBBS course under Physically Handicapped Category as arbitrary, illegal and unconstitutional and consequently direct the respondents to consider the admission of Petitioner under Physically Handicapped Category as per G.O.Ms.No.183, Dt. 30-6-2004.

Counsel for the Petitioner : MR. K.VENUGOPAL REDDY

Counsel for the Respondents 1 & 2: GP FOR MEDICAL HEALTH & FAMILY WELFARE

Counsel for the Respondent No.3 : Dr.Y. Padmavathi

Counsel for the Respondent No.4 : Mr.S. Niranjan Reddy

The Court made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.18079 OF 2004

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ORDER :

This writ petition is filed seeking a declaration that the action of the respondents in not considering the petitioner for admission into First Year MBBS Course under Physically Handicapped Category as arbitrary and illegal.

The case of the petitioner, as stated in the affidavit filed in support of the writ petition, is as follows :

The petitioner appeared for EAMCET, 2004 in the Medical Stream and obtained Rank No.10194. On 02-07-2004, he submitted his application together with all the required certificates to the Chairman, Under-graduate Admission Committee, N.T.R. University of Health Sciences, seeking admission into First Year MBBS Course as a local candidate of S.V. University under the Physically Handicapped Quota. Along with the said application, he enclosed a Medical Certificate issued by the District

Medical Board, Cuddapah, dated 29-10-2001 which shows the percentage of disability as 40%. However, subsequently, he approached the Medical Board, Cuddapah, once again, and on 16-07-2004 a fresh certificate has been issued certifying the percentage of disability of the petitioner as 50%. The said certificate was forwarded to the third respondent - The Registrar, N.T.R. University of Health, Medical Sciences, Vijayawada and the matter was also brought to the notice of the Registrar of the University on 24-07-2004 under Help Line. Though the respondent Authorities accepted the certificate and the petitioner attended the counselling held at the third respondent University, the candidature of the petitioner was not considered under the Physically Handicapped Quota and consequently the petitioner was denied the admission of First Year MBBS Course. Hence, this writ petition.

The contention of the petitioner is that as per G.O.Ms.No.183, dated 30-06-2004 whereunder Regulation of Admissions into Under-graduate Medical and Dental Professional Courses Rules, 2004 were issued reserving 3% seats under the Physically Handicapped Category for candidates with the locomotory disorders with disability of lower limbs between 50% to 70%, the petitioner is entitled for being considered for admission since the certificate issued by the Medical Board, Cuddapah, dated 16-07-2004 shows the extent of disability suffered by the petitioner as 50%. It is contended that the action of the respondents in denying admission to the petitioner into First Year MBBS Course is contrary to the Rules. It is also contended that the respondents failed to follow the 3% quota provided for the Physically Handicapped properly in terms of the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short, 'the Disabilities Act, 1995') and the Rules made thereunder.

The third respondent – The Registrar, NTR University of Health Sciences, Vijayawada, filed a detailed counter-affidavit stating that the University has strictly implemented the guidelines issued by the Government of India as per the recommendations of the Medical Council of India under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Participation) Act, 1995 as well as the provisions of the Regulations under G.O.Ms.Nos.183, 184, and 185 dated 30-06-2004 while granting admissions under different categories and particularly the 3%

reservation provided to the Physically Handicapped.

It is further stated that as per Medical Council of India Guidelines communicated to Registrars of All Universities, dated 14-07-2003 for filling of reserved seats for persons having locomotory disabilities, for admissions into Medical Courses, only persons with locomotory disability of lower limbs between 50% to 70% should be allowed the benefit of reservation for admission into Medical Courses. This condition shall apply to admission in all Medical Courses for reserved seats. It is also stated that the last date for receiving applications with all the relevant certificates was 05-07-2004 and as per Regulation-V of the Regulations for admission into MBBS and BDS Courses in the Medical Colleges and Dental Colleges affiliated to the University for the academic year 2004-05, applications forms received after last date and time and those unaccompanied by the required certificates with incomplete entries shall stand rejected automatically. Applications from ineligible candidates summarily rejected. The petitioner along with the application form submitted a certificate dated 29-10-2001 issued by the District Medical Board, Cuddapah indicating the percentage of disability as 40% and therefore he was not eligible for being considered under the Physically Handicapped Quota. It is alleged that the petitioner having realised that as per the certificate dated 29-10-2001 he is not eligible to be considered under the Physically Handicapped Quota, produced a subsequent certificate issued by the Regional Medical Board, S.V.R.R. Hospital, Tirupati, dated 28-07-2004 and the conduct of the petitioner in producing various certificates from various Boards is fraudulent and cannot be accepted. It is further stated that as per the Government Orders, the candidates claiming reservation benefits under the above categories shall produce original documents in support of their claim to the Committee for Admissions and the Committee shall be entitled to refer the original documents of the candidates claiming reservation for scrutiny and confirmation to the Medical Board constituted by the Competent Authority i.e., the Vice-Chancellor, NTR University of Health Sciences, in respect of candidates who seek admission into the seats reserved under Physically Handicapped Quota. Accordingly, the Competent Authority constituted a Medical Board consisting of six members with Postgraduate Degrees in various specialities to scrutinise and confirm the eligibility of candidates for admissions into the seats reserved under Physically Handicapped Quota. The said Medical Board, which consists of three

Orthopaedicians, one Physician, One Surgeon and One Ophthalmologist has scrutinised all the physically handicapped candidates applied for admissions into MBBS/BDS Courses for the year 2004-2005 and as per the Report submitted by the Medical Board, the petitioner is not eligible for admission since he is having only 40% disability. In view of the said report submitted by Medical Board, the selection committee has not considered the petitioner for admission under Physically Handicapped Quota. It is further stated that out of 108 students appeared before the Medical Board for physical verification, 57 students were rejected by the Medical Board as they were not eligible as per the guidelines issued by the Medical Council of India. The University is bound by the certification of the Medical Board and it has been strictly implementing the instructions of the Government of India in letter dated 12-05-2004 as per recommendations of the Medical Council of India, under the provisions of the Disabilities Act, 1995 and the allegations made by the petitioner are without any substance and therefore the relief as prayed for cannot be granted.

A separate counter-affidavit has been filed on behalf of the fourth respondent – Medical Council of India stating that by virtue of the provisions of Section 33 of the Indian Medical Council Act, 1956 the Medical Council of India has been empowered with the prior approval of the Central Government to frame Regulations for laying down minimum standards of infrastructure, teaching and other requirements for conduct of Medicine Courses. It also lays down in detail the course content, the duration, distribution of teaching and training days on various subjects and also for conduct of examination etc., and that the regulations so made are binding and mandatory. It is also stated that with regard to the admissions in the medical courses, the Medical Council of India has laid down certain guidelines whereby it is only persons with more than 50% and less than 70% locomotory disability of lower limbs of the body who can be conferred the benefits of the reservation under the provisions of The Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. In pursuance of the judgment of the Delhi High Court, dated 11-08-2003 in PARUL JHUNJHUNWALA vs. UNIVERSITY OF DELHI AND OTHERS, the General Body of the Medical Council of India reconsidered the issue and concluded that with regard to the admissions in medical courses, the percentage of locomotory disability of lower limbs should be 50% to 70% so as to ensure that the benefit of the reservation actually reaches the deserving candidates.

On the basis of the said decision of the Medical Council of India, the Central Government vide letter dated 12-05-2004 directed various authorities to ensure that the admission of physically handicapped candidates would be as per the Norms fixed by the Medical Council of India. With a view to ensuring that the provisions of the Disabilities Act, 1995 are complied with and only the candidates suffering from genuine disability are conferred the benefit of reservation, the Medical Council of India prescribed that in addition to any other prior medical certificate, the candidate seeking the benefit of reservation should present himself before a Medical Board comprising of at least one expert from the speciality of Orthopaedics of a Central Government Hospital and from State Medical Boards in the States and that the Disability Certificate from the Medical Board should have been issued within three months prior to presenting the application for seeking admission in any medical course by claiming the benefit of reservation. It is further stated that in compliance with the directions issued by the Supreme Court in MEDICAL COUNCIL OF INDIA vs. MADHU SINGH, the Medical Council of India decided the time-schedule for admissions, postgraduate and super-speciality courses. For the admissions in the MBBS course, it was laid down that 30th September, shall be the last date for admissions in all the colleges in the country from the academic session 2003-04. It was decided that the admissions must be completed before 31st of July of the concerned year and that the academic sessions in all the teaching institutions should commence on 1st August of the concerned year. The resultant / consequential admissions shall be completed by 30th of September of the concerned year. The said time-schedule has been approved by the Government of India and it shall be applicable from the academic year 2003-04 onwards, thereby clearly approving 30th September, 2003 as the last date for admissions in the MBBS course in all the medical colleges. The said time-schedule had become enforceable by virtue of the provision of Section 33 of the Medical Council of India Act, 1956 w.e.f. 14-05-2003. The said time-schedule should be strictly adhered to as held by the Supreme Court in various decisions and therefore the petitioner is not entitled to any relief as prayed for.

I have heard the learned Counsel for the petitioner as well as the learned Standing

Counsel appearing for the third respondent and perused the material on record.

The learned Counsel for the writ petitioner reiterated the contentions raised in the writ petition and strenuously contended that the respondents are not justified in not considering the case of the petitioner for admission into I-year MBBS course under the Physically Handicapped Category.

On behalf of the third respondent University, the learned Standing Counsel, at the outset, submitted that the admissions for the academic year 2004-05 were already closed and the writ petition filed long thereafter is not maintainable and it is not open to the petitioner to challenge the admissions at this belated stage in the light of the ratio laid down by the Supreme Court in MEDICAL COUNCIL OF INDIA's case (1 supra), NEELU ARORA v. UNION OF INDIA and SHAFALI NANDWANI v. STATE OF HARYANA.

The fact that the admissions for I-year MBBS course for the academic year 2004-05 were already closed on 30-09-2004 is not in dispute. If that be so, the ratio laid down by the Apex Court in the above decisions squarely applies to the case on hand and therefore I find force in the preliminary objection raised by the learned Standing Counsel for the respondents that the petitioner cannot be granted any relief at this point of time, in which event it would be against the intended objects of fixing a time-schedule.

Even on merits, it is to be noted that as per Rule-9(3) of the A.P. Government Professional Institutions (Regulations of Admissions into Under-graduate Medical and Dental Professional Courses) Rules, 2004 (for short, 'the Rules') issued under G.O.Ms.No.183, Health, Medical & Family Welfare (E1) Department, dated 30-06-2004, the 3% seats reserved under Physically Handicapped Category, applies only to the physically handicapped candidates with the locomotory disorders and that too with disability of lower limbs between 50% to 70% as per the instructions of the Government of India, dated 12-05-2004 under the Disabilities Act, 1995. It is also relevant to note that under Rule-9(3) of the Rules, the candidates claiming the

benefit of reservation under the categories specified thereunder shall produce original documents in support of their claim to the Committee for Admissions who shall be entitled to refer the original documents of the candidates claiming reservation for scrutiny and confirmation to the authorities specified thereunder. So far as the physically handicapped category is concerned, the authority has been specified as the Medical Board constituted by the competent authority i.e., the Vice-chancellor of the third respondent University.

Admittedly, the Certificate dated 19-10-2001 produced by the petitioner before the Committee for Admissions shows the extent of disability suffered by the petitioner as 40%. May be that, the petitioner, subsequently, produced a certificate dated 16-07-2004, according to which the disability suffered by the petitioner was shown as 50%, however, since the same having not been produced before the Committee for Admissions, it cannot be said that the third respondent has acted illegally in not accepting the same. Moreover, as can be seen from the counter-affidavit of the Medical Council of India, the Disability Certificate produced by the candidate seeking the benefit of reservation should have been issued within three months prior to presenting the application seeking admission in the medical course so as to ensure that only candidates who are genuinely disabled are conferred the benefit of reservation. Hence, even on that ground, the certificate dated 16-07-2004 obtained by the petitioner long after the commencement of the process of admissions cannot be accepted. It is also relevant to note that the Medical Board constituted by the Vice-chancellor of the third respondent University consisting of six members with Postgraduate Degrees in various specialities has scrutinized all the physically handicapped candidates applied for admissions including the petitioner, and as per the report of the Medical Board the petitioner was having disability to the extent of 40% and thereby he was held to be not eligible for admission. The counter-affidavit of the third respondent shows that as a matter of fact out of 108 students appeared before the Medical Board for physical verification 57 students were rejected as they were not eligible as per the guidelines issued by the Medical Council of India. In the counter-affidavit, it is also categorically stated that the eligibility criteria against the 3% reservation to the physically handicapped has been fixed as per the instructions of the Government of India, in letter dated 12-05-2004 in terms of the provisions of the Disabilities Act, 1995.

The law is well settled that in the matters of admission to educational courses, this Court will not normally interfere in exercise of its jurisdiction under Article 226 of the Constitution of India unless the procedure followed is found to be arbitrary or vitiated by any patent material irregularity or where *mala fides* attributed are established. Where specific procedure is prescribed for selection of candidates and the selection process was done in accordance with the same, the Court will decline to interfere on mere allegations of irregularity without any supporting material and particularly in the absence of any *mala fides*. It is also well settled that this Court will not sit in Appeal and substitute its judgment to the opinion of the experts in the absence of any legal or constitutional infirmity.

In the case on hand, except the vague statement in the affidavit of the petitioner that the respondents failed to follow the 3% Quota reserved for physically handicapped, there is absolutely no material to substantiate the said allegation. On the other hand, the detailed counter-affidavits filed by the respondents demonstrate that the procedure prescribed for selection for admission has been scrupulously followed. Even with regard to the extent of the disability suffered by the petitioner, in the light of the certificate dated 29-10-2001 initially produced by the petitioner himself and in view of the opinion of the Medical Board, consisting of experts, it was rightly concluded by the respondents that he suffered disability to the extent of 40% and thus not eligible. In the circumstances and particularly in the absence of allegation of any *mala fides* against any one of the officials, I do not find any substance in the contentions raised by the petitioner. As observed above, the Medical Board, which consists of experts, has considered the case of the petitioner and found him not eligible since he suffered only 40% disability. This Court while exercising jurisdiction under Article 226 of the Constitution of India will not sit in Appeal against such decision of the Expert Committee.

For the aforesaid reasons, the Writ Petition is devoid of any merit and accordingly, the Writ Petition is dismissed. No costs.

20th December, 2004.

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To

- 1 The Principal Secretary, Government of Andhra Pradesh,
Health Medical & Family Welfare (E1) Department, Secretariat, Hyderabad.
- 2 The Competent Authority, N.T.R. university of Health, Medical Sciences,
Vijayawada.
- 3 The Registrar, N.T.R. university of Health, Medical Sciences,
Vijayawada.
- 4 The Secretary, Medical Council of India, Kotla Road, Mata Sundary College
for Women, New Delhi - 100 0021.

5. 2CCs to G.P. for Medical, Health & Family Welfare, High Court of AP Bldgs,
Hyderabad. (OUT).

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